In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1032

SALVATORE BATTAGLIA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner, together with Dave Evans and Joseph Amabile,[1] was convicted after a jury trial in the United States District Court for the Northern District of Illinois in April, 1967, of conspiring to obstruct interstate commerce by means of extortion in violation of the Hobbs Act, 18 U.S.C. 1951. Petitioner was sentenced to fifteen years' imprisonment. The court of appeals affirmed with one judge dissenting (Pet. App. 1–45, 394 F. 2d 304). A motion for remand was denied (Pet. App. 46–48, 394 F. 2d 327), as was a petition for re-

[1] Both Evans and Amabile filed separate petitions for writs of certiorari (Nos. 925 and 930, this Term), to which the government's response was filed on December 14, 1970.

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hearing (Pet. App. 71). On separate petitions for writs of certiorari (Evans: No. 106, O.T. 1968; Amabile: No. 129, O.T. 1968; Battaglia: No. 108 O.T. 1968), to which the government filed a single response, this Court remanded the cases along with a number of others (*sub nom. Giordano* v. *United States*, 394 U.S. 310) for further district court proceedings in conformity with *Alderman* v. *United States*, 394 U.S. 165; these proceedings related to three electronically overheard conversations involving petitioner and previously disclosed by the government to the court of appeals, which, after *in camera* examination, were held by that court to be irrelevant. After a full evidentiary hearing on the remand, the district court found that the overhearings did not taint the convictions, and reimposed the original judgments and sentences. The court of appeals again affirmed, with one judge concurring on the eavesdropping question but adhering to his original dissent in the prior appeals (Pet. App. 72–78).

Petitioner, like his codefendants Evans and Amabile, does not now raise any eavesdropping issue. Instead, he has resubmitted substantially the same issues which were contained in his previous petition and which were answered in detail in our prior brief in opposition. His reargued claims are, in essence, that the evidence was insufficient to establish that he conspired to commit extortion in violation of the Hobbs Act (Pet. 16–24, answered at pp. 11–14 and 20–21 of our prior brief); that the grand jury testimony of government witnesses should have been fully disclosed to the defense (Pet. 24–29, answered at pp. 14–17 of

our prior brief); and that improper limitations were placed on defense cross-examination of the victim of the conspiracy (Pet. 29–32, answered at pp. 19–20 of our prior brief; see also n. 3 on p. 3 of our joint response to the petitions in Nos. 925 and 930, this Term).[2]

The present petition includes two additional arguments:

1. Petitioner asserts that reversal of his conviction is required because of prejudicial publicity during the trial (Pet. 32–39).[3] He does not contend that any of this publicity in fact reached the jury, but rather complains that the trial judge erred by asking the jury collectively, instead of questioning each juror separately, whether each member had complied with the court's instructions on this matter. In support of his assertion, petitioner relies chiefly on a recommendation of the American Bar Association Project on Minimum Standards of Criminal Justice (Pet. 34–35), and two earlier decisions of the court below: *United States* v. *Palermo*, 410 F. 2d 468 (C.A. 7), and *Margoles* v. *United States*, 407 F. 2d 727 (C.A. 7), certiorari denied, 396 U.S. 833. The court of appeals distinguished *Palermo* because in that case the trial judge did not question the jurors at all regarding their exposure to adverse publicity (Pet. App. 76). And, as the court also noted,

[2] Together with our joint response to petitions in Nos. 925 and 930, we filed, for distribution to the Court, ten additional copies of our brief in opposition filed in the 1968 Term.

[3] As the court below in its prior opinion observed (Pet. App. 23), petitioner and his co-defendants successfully objected to sequestering the jury, which would have eliminated the possibility of any juror exposure to prejudicial publicity.

collective questioning of the jury was indeed approved by *Margolies*, which required individual questioning only of jurors actually exposed to prejudicial publicity (*ibid.*).

2. Petitioner further contends that error occurred in the midtrial instruction that evidence previously admitted against only those defendants present when the acts or conversations took place could at that point be considered against all defendants "as evidence in connection with the alleged conspiracy charged in the indictment" (Pet. 39–42). The court below correctly rejected this contention in its first opinion (Pet. App. 13–15, 394 F. 2d at 312–313), on which we here rely. See also our brief in opposition in *Jacobs* and *Spiegel* v. *United States*, Nos. 917 and 6139, this Term, a copy of which we shall provide to petitioner's counsel.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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